

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

<b>In re:</b> <b>David E. Layton,</b>  <b>Debtor(s)</b>	<b>Chapter 13</b>  <b>Bankruptcy No. 17-14879-jkf</b>
<b>David E. Layton,</b>  <b>Plaintiff(s)</b>  <b>vs.</b>  <b>Branch Banking &amp; Trust Company,</b>  <b>Defendant(s)</b>	<b>Adversary Proceeding No.</b>

**COMPLAINT SEEKING TO DETERMINE THE EXTENT AND VALIDITY OF  
SECURED STATUS OF CREDITOR UNDER 11 U.S.C. SECTION 502,506**

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Debtor(s) and Plaintiff(s), David E. Layton, by and through his counsel, Michael D. Hess Esquire and Burke & Hess, hereby files this Complaint Seeking to Determine the Extent and Validity of Secured Status Under 11 U.S.C. Sections 502, 506, and in support thereof sets forth as follows:

**PARTIES**

1. Plaintiff(s), David E. Layton, is the Debtor in the above-captioned Chapter 13 proceeding.
2. Defendant(s) is Branch Banking & Trust Company, a corporation doing business in the Commonwealth of Pennsylvania.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Section 1334(b) as a proceeding arising under the Bankruptcy Code.
4. The matters set forth in this Complaint are core proceedings and may be heard by a Bankruptcy Judge pursuant to 28 U.S.C. Section 157(b)(2)(A) and (K).

5. This is an action brought under those provisions of the Bankruptcy Code, 11U.S.C. Sections 502(b) and 506(a)(d), allowing the Plaintiff to determine the extent and validity of a certain mortgage lien allegedly held by Branch Banking & Trust Company in the residence owned by the Debtor(s) located at 115 Autumn Drive, Lititz, Pennsylvania, Lancaster County, 17543.

6. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. Section 1409.

### **COMPLAINT**

7. On July 20, 2017, the Debtor(s) filed a Petition for Relief under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Pennsylvania.

8. Branch Banking & Trust Company holds a third lien mortgage position against the Residence (the "Mortgage"), which is recorded in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania.

9. The fair market value of the Residence at the time the Branch Banking & Trust Company debt was incurred was \$140,000.00.

10. PNC Bank, National Association holds a first lien mortgage position against the Residence and has a secured claim in the amount of \$131,174.34. See Proof of Claim No. 5-1 filed by PNC Bank, National Association in this bankruptcy.

11. First Tennessee Bank National Association holds a second lien mortgage position against the Residence and has a claim in the amount of \$15,597.11. See Proof of Claim No. 1-1 First Tennessee Bank National Association filed in this bankruptcy.

12. Branch Banking & Trust Company holds a third lien mortgage position against the Residence and has a claim in the amount of \$309,661.02. See Proof of Claim No. 3-2 Branch Banking & Trust Company filed in this bankruptcy.

12. At the time the mortgage was given, the balance of the first and second mortgage exceeded the value of the property. Therefore, no equity existed for the third mortgage to attach to.

13. Branch Banking & Trust Company, claim and mortgage are unsecured pursuant to 11 U.S.C. § 506(a).

WHEREFORE, Debtor(s) request judgment against Branch Banking & Trust Company (a) declaring Branch Banking & Trust Company claim is unsecured, (b) avoiding the Mortgage and declaring the same to be null and void, (c) ordering Branch Banking & Trust Company to file the appropriate documents with the Recorder of Deeds

of Lancaster County to indicate the satisfaction of the Mortgage, and (d) granting the Debtor(s) such other and further relief as may be proper.

**Respectfully Submitted,**

**BURKE & HESS**

**By:** /s/Michael D. Hess, Esquire  
**Michael E. Hess, Esquire**  
**1672 Manheim Pike**  
**Lancaster, PA 17601**